

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CASE NO. 04-11789-RCL

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MARLENE JOHANSEN,

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Plaintiff,  
Counterclaim Defendant,

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v.

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UNITED STATES OF AMERICA,

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Defendant,  
Counterclaim Plaintiff,

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v.

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NATIONAL CITY MORTGAGE  
CO. AND TIMOTHY BURKE,

\*

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Counterclaim Defendants.

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**STIPULATED AGREEMENT AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between defendant and counterclaim plaintiff The United States of America (“United States”) and counterclaim defendant National City Mortgage Co. (“National City”) as follows:

1. National City was granted a mortgage dated February 11, 2004 in the original principal amount of \$139,300 (the “National City Mortgage”) on the subject property located at 71 Pleasant Street, Stoneham, Massachusetts (the “Property”) by plaintiff Marlene Johansen. The National City Mortgage was recorded at the South Middlesex County Registry of Deeds on February 11, 2004, at Book 42114, Page 100.

2. The National City Mortgage refinanced and satisfied a prior mortgage granted to Shawmut Mortgage Corporation (the "Prior Mortgage"), dated November 17, 1988, and recorded at the South Middlesex County Registry of Deeds on November 23, 1988, at Book 19486, Page 466. The Satisfaction of the Prior Mortgage was recorded at the South Middlesex County Registry of Deeds on March 24, 2004, at Book 42296, Page 598.

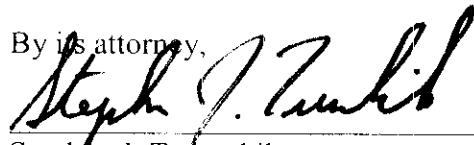
3. Because of its refinancing of the Prior Mortgage, the National City Mortgage is entitled to be equitably subrogated to the priority of the Prior Mortgage. *See Progressive Consumers Federal Credit Union v. United States*, 79 F.3d 1228 (1<sup>st</sup> Cir. 1996).

4. Because of its subrogation to the priority of the Prior Mortgage, the National City Mortgage has priority over (1) the Notice of Federal Tax Lien on the Property, recorded at the South Middlesex County Registry of Deeds on December 18, 2002, at Book 37407, Page 522, and (2) the Nominee Federal Tax Lien on the Property, recorded at the South Middlesex County Registry of Deeds on January 31, 2004, at Book 41923, Page 104.

5. A copy of this Stipulated Agreement and Order may be recorded in the South Middlesex County Registry of Deeds. This Stipulated Agreement shall bind the parties hereto and may be relied upon by assignees or transferees and other successors in title to the National City Mortgage.

THE UNITED STATES OF AMERICA

By its attorney,



Stephen J. Turanchik  
U.S. Department of Justice  
Trial Attorney, Tax Division  
P.O. Box 55  
Ben Franklin Station  
Washington, DC 20044  
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NATIONAL CITY MORTGAGE  
COMPANY

By its attorney,



Richard A. Oetheimer, BBO #377655  
GOODWIN PROCTER LLP  
Exchange Place  
Boston, MA 02109-2881  
(617) 570-1000

SO ORDERED

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Hon. Reginald C. Lindsay  
United States District Judge

Date:

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